

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1874

6
7 H.P. 1337

House of Representatives, January 15, 1986

8 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 26.

9 Reference to the Committee on Utilities suggested and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Davis of Monmouth.

Cosponsored by Representative Jacques of Waterville.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Permit State Regulation of Dam
18 Impoundment Areas.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 38 MRSA §840, sub-§1, ¶¶B and C, as enacted by PL
23 1983, c. 417, §6, are repealed.

24 STATEMENT OF FACT

25 The purpose of this bill is to give the Board of
26 Environmental Protection regulatory authority to set
27 water levels over impoundments presently exempt from
28 state or federal regulation.

29 Current federal law exempts from federal regula-
30 tion those bodies of water impounded by dams built
31 before 1920. As originally proposed, the Maine Re-
32 vised Statutes, Title 38, section 840, would have ex-

1 emptied from the Department of Environmental
2 Protection's water level setting jurisdiction only
3 those dams subject to federal licensing or those dams
4 operating with a state permit already setting water
5 levels. The first exemption was intended to avoid any
6 constitutional infringement on federal jurisdiction;
7 the 2nd to avoid duplication of state jurisdiction.

8 When the Maine Revised Statutes, Title 38, sec-
9 tion 840, was originally enacted, additional exemp-
10 tions, which are presently contained in Title 38,
11 section 840, subsection 1, paragraphs B and C, were
12 also added after concerns about regulation were
13 voiced by owners of existing dams.

14 The effect of the Maine Revised Statutes, Title
15 38, section 840, subsection 1, paragraphs A and B, is
16 to presently exempt all impoundments above dams built
17 before 1920 from any regulation, state or federal.
18 All other dams are currently subject to regulation.

19 The waters of the State are owned by the people.
20 The fish, wildlife and natural resources of the State
21 are held in trust by the State for the people. Devel-
22 opments since the original exemptions were enacted
23 have demonstrated that these exceptions are incompat-
24 ible with the State's right to exercise ownership of
25 its waters, as well as its duty to protect its fish
26 and wildlife. Recently, at least one major fish kill
27 of over 100,000 smelt has resulted from the
28 precipitous drawdown of water behind an unregulated
29 impoundment. When this occurs, the economic and rec-
30 reational use and value of lakeshore property held by
31 riparian owners, lessees and other users is suddenly
32 and adversely affected. Efforts at setting water lev-
33 els by mediation or other voluntary means have been
34 unsuccessful, making this bill necessary.

35 There is no rational justification for distin-
36 guishing between new dams and impoundments which are
37 subject to state regulation and old ones which are
38 not met. The effect of inadequately regulated water
39 level fluctuations on fish, wildlife and other legit-
40 imate state and private interests is potentially the
41 same, regardless of when the dam was built.

1 The bill seeks to remove the present exempt sta-
2 tus for "grandfathered dams" and to return the Maine
3 Revised Statutes, Title 38, section 840, to its origi-
4 nally proposed form. This bill incorporates the
5 specific recommendations of the Commissioner of Envi-
6 ronmental Protection in testimony given April 10,
7 1985, before the Joint Standing Committee on Energy
8 and Natural Resources.

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